

CS FOR HOUSE BILL NO. 321(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/10/06

Referred: Finance

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto, Anderson, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to high risk operation of a motor vehicle, aircraft, or watercraft while
2 under the influence of an alcoholic beverage, inhalant, or controlled substance and to
3 refusal to submit to a chemical test."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 28.35.030(b) is amended to read:

6 (b) Except as provided under (n) of this section, driving while under the
7 influence of an alcoholic beverage, inhalant, or controlled substance is a class A
8 misdemeanor. Except as provided under (p) of this section, upon conviction [,]

9 (1) under

10 (A) (a)(1) or (2) of this section, when the court finds there
11 was at least 0.08 percent but less than 0.16 percent by weight of alcohol in
12 the person's blood or at least 80 milligrams but less than 160 milligrams of
13 alcohol per 100 milliliters of blood, or if there was at least 0.08 grams but
14 less than 0.16 grams of alcohol per 210 liters of the person's breath, the

1 court shall impose a minimum sentence of imprisonment of

2 (i) [(A)] not less than 72 consecutive hours and a fine of
 3 not less than \$1,500 if the person has not been previously convicted;

4 (ii) [(B)] not less than 20 days and a fine of not less
 5 than \$3,000 if the person has been previously convicted once;

6 (iii) [(C)] not less than 60 days and a fine of not less
 7 than \$4,000 if the person has been previously convicted twice and is
 8 not subject to punishment under (n) of this section;

9 (iv) [(D)] not less than 120 days and a fine of not less
 10 than \$5,000 if the person has been previously convicted three times and
 11 is not subject to punishment under (n) of this section;

12 (v) [(E)] not less than 240 days and a fine of not less
 13 than \$6,000 if the person has been previously convicted four times and
 14 is not subject to punishment under (n) of this section;

15 (vi) [(F)] not less than 360 days and a fine of not less
 16 than \$7,000 if the person has been previously convicted more than four
 17 times and is not subject to punishment under (n) of this section;

18 (B) (a)(2) of this section, when the court finds there was
 19 0.16 percent or more by weight of alcohol in the person's blood or 160
 20 milligrams or more of alcohol per 100 milliliters of blood, or if there was
 21 0.16 grams or more of alcohol per 210 liters of the person's breath, the
 22 court shall impose a minimum sentence of imprisonment of

23 (i) not less than 144 consecutive hours and a fine of
 24 not less than \$1,500 if the person has not been previously
 25 convicted;

26 (ii) not less than 40 days and a fine of not less than
 27 \$3,000 if the person has been previously convicted once;

28 (iii) not less than 80 days and a fine of not less than
 29 \$4,000 if the person has been previously convicted twice and is not
 30 subject to punishment under (n) of this section;

31 (iv) not less than 140 days and a fine of not less than

\$5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(v) not less than 280 days and a fine of not less than \$6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(vi) not less than 360 days and a fine of not less than \$7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

* **Sec. 2.** AS 28.35.030(k) is amended to read:

(k) Imprisonment required under **(b)(1)(A)(i)** [(b)(1)(A)] of this section shall be served at a community residential center or, if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. Imprisonment required under **(b)(1)(A)(ii) - (vi) or (b)(1)(B)** [(b)(1)(B) - (F)] of this section may be served at a community residential center or at a private residence if

approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring. The cost of imprisonment resulting from the sentence imposed under (b)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$4,000 [\$2,000]. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection, payment of the cost of imprisonment is not required if the court determines the person is indigent. For costs of imprisonment that are not paid by the person as required by this subsection, the state shall seek reimbursement from the person's permanent fund dividend as provided under AS 43.23.065. While at the community residential center or other appropriate place, a person sentenced under (b)(1)(A)(i) [(b)(1)(A)] of this section shall perform at least 24 hours of community service work. A person sentenced under (b)(1)(A)(ii) or (b)(1)(B)(i) - (ii) [(b)(1)(B)] of this section shall perform at least 160 hours of community service work, as required by the director of the community residential center or other appropriate place, or as required by the commissioner of corrections if the sentence is being served at a private residence. In this subsection, "appropriate place" means a facility with 24-hour on-site staff supervision that is specifically adapted to provide a residence, and includes a correctional center, residential treatment facility, hospital, halfway house, group home, work farm, work camp, or other place that provides varying levels of restriction.

* **Sec. 3.** AS 28.35.030(t)(4) is amended to read:

(4) "previously convicted" means having been convicted in this or another jurisdiction within the 15 years preceding the date of the present offense of any of the following offenses; however, convictions for any of these offenses, if arising out of a single transaction and a single arrest, are considered one previous conviction:

(A) operating a motor vehicle, aircraft, or watercraft in violation of this section or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this

1 section or required for enhanced punishment under (b)(1)(B) of this
 2 section;

3 (B) refusal to submit to a chemical test in violation of
 4 AS 28.35.032 or in violation of another law or ordinance with similar
 5 elements; or

6 (C) operating a commercial motor vehicle in violation of
 7 AS 28.33.030 or in violation of another law or ordinance with similar
 8 elements, except that the other law or ordinance may provide for a lower level
 9 of alcohol in the person's blood or breath than imposed under
 10 AS 28.33.030(a)(2).

11 * **Sec. 4.** AS 28.35.032(g) is amended to read:

12 (g) Except as provided under (r) of this section, upon conviction under this
 13 section,

14 (1) the court shall impose a minimum sentence of imprisonment of

15 (A) not less than 144 [72] consecutive hours and a fine of not
 16 less than \$1,500 if the person has not been previously convicted;

17 (B) not less than 40 [20] days and a fine of not less than \$3,000
 18 if the person has been previously convicted once;

19 (C) not less than 80 [60] days and a fine of not less than \$4,000
 20 if the person has been previously convicted twice and is not subject to
 21 punishment under (p) of this section;

22 (D) not less than 140 [120] days and a fine of not less than
 23 \$5,000 if the person has been previously convicted three times and is not
 24 subject to punishment under (p) of this section;

25 (E) not less than 280 [240] days and a fine of not less than
 26 \$6,000 if the person has been previously convicted four times and is not
 27 subject to punishment under (p) of this section;

28 (F) not less than 360 days and a fine of not less than \$7,000 if
 29 the person has been previously convicted more than four times and is not
 30 subject to punishment under (p) of this section;

31 (2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; and

(ii) pay the minimum fine required under (1) of this subsection; or

(B) suspend imposition of sentence;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

* **Sec. 5.** AS 28.35.032(o) is amended to read:

(o) Imprisonment required under (g)(1)(A) of this section shall be served at a community residential center, or if a community residential center is not available, at another appropriate place determined by the commissioner of corrections. Imprisonment required under (g)(1)(B) - (F) of this section may be served at a community residential center or at a private residence if approved by the commissioner of corrections. Imprisonment served at a private residence must include electronic monitoring. The cost of imprisonment resulting from the sentence imposed under (g)(1) of this section shall be paid to the state by the person being sentenced provided, however, that the cost of imprisonment required to be paid under this subsection may not exceed \$4,000 [\$2,000]. Upon the person's conviction, the court shall include the costs of imprisonment as a part of the judgment of conviction. Except for reimbursement from a permanent fund dividend as provided in this subsection,

1 payment of the cost of imprisonment is not required if the court determines the person
 2 is indigent. For costs of imprisonment that are not paid by the person as required by
 3 this subsection, the state shall seek reimbursement from the person's permanent fund
 4 dividend as provided under AS 43.23.065. While at the community residential center
 5 or other appropriate place, a person sentenced under (g)(1)(A) of this section shall
 6 perform at least 24 hours of community service work. A person sentenced under
 7 (g)(1)(B) of this section shall perform at least 160 hours of community service work,
 8 as required by the director of the community residential center or other appropriate
 9 place, or as required by the commissioner of corrections if the sentence is being served
 10 at a private residence. In this subsection, "appropriate place" means a facility with 24-
 11 hour on-site staff supervision that is specifically adapted to provide a residence, and
 12 includes a correctional center, residential treatment facility, hospital, halfway house,
 13 group home, work farm, work camp, or other place that provides varying levels of
 14 restriction.

15 * **Sec. 6.** AS 28.35.032(i) is repealed.

16 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 **DIRECTION TO DEPARTMENTS.** If departments of the state undertake public
 19 information or relations efforts to inform the public concerning the provisions of
 20 AS 28.35.030(b)(1)(B), added by sec. 1 of this Act, the departments may not minimize the
 21 illegality or danger of levels of intoxication below these aggravated levels and shall inform
 22 the public that lower levels of intoxication are also illegal and dangerous.